FILE COPY

Office - Supreme Court, U. S.
FILED
NOV 24 1947
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

October Term, 1947

No. 90

PEOPLE OF THE STATE OF ILLINOIS *ex rel.*
VASHTI McCOLLUM,

Appellant,

vs.

BOARD OF EDUCATION OF SCHOOL DISTRICT No. 71, CHAMPAIGN COUNTY, ILLINOIS, and ELMER C. BASH and ALICE J. BASH, and WANDA I. BASH, a Minor, by ELMER C. BASH, Her Father and Next Friend,

Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS

PETITION AND BRIEF, *AMICUS CURIAE*, BY THE PROTESTANT COUNCIL OF THE CITY OF NEW YORK, with special reference to the New York Statute and Judicial Decisions sanctioning "Released Time".

CHARLES H. TUTTLE, *Counsel*,
15 Broad Street,
New York City 5, N. Y.

TABLE OF CONTENTS

	PAGE
Preliminary Statement	1
The New York Statute for Released Time	2
The Rules for Released Time, as Established by the State Commissioner of Education and by the New York City Board of Education, Pursuant to the New York Statute	4
The Chief Characteristics of New York Statutory Released Time	7
The Decisions of the New York Courts in *People ex rel. Lewis* v. *Graves*, Upholding the Constitutionality of the New York Plan of Released Time	8
Governor Lehman's Memorandum on Signing the New York Statute	13
Statutes in Other States Similar to the New York Statutory Program of Released Time	14
The American Tradition	15
The New York Statutory Program of Released Time is a Recognition of the Constitutional Right of Parents and Guardians to Religious Conviction and Freedom in the Education of Their Children	16

CASES CITED

Everson v. Board of Education, 330 U. S. 1	7
Gordon v. Board of Education of the City of Los Angeles, 78 Cal. App. (2d) 498; 178 Pac. (2d) 488	12, 15
Holy Trinity Church v. United States, 143 U. S. 457	15

PAGE

Judd v. Board of Education, 278 N. Y. 200 11

Lewis v. Board of Education of the City of New York, 258 N. Y. 117, 123 ..... 11, 12

Palko v. Connecticut, 302 U. S. 319 (1937) 18
People ex rel. Latimer v. Board of Education, 394 Ill. 228 ..... 11, 12
People ex rel. Lewis v. Graves, 245 N. Y. 195, decided May 10, 1927 ..... 2, 8, 11, 12, 13
Pierce v. Society of Sisters (Oregon School Law case), 268 U. S. 510 16
Prince v. Massachusetts, 321 U. S. 158 (1944) 17

Stein v. Brown, 125 Misc. 692 (June 23, 1925) 12, 13
Stuart, In re, 114 Fed. (2d) 825 (1940) 17

TEXTS

American Law Reports, Annotated, 167 A. L. R. p. 1474 13

Bulletin 1941, No. 3, Federal Security Agency, U. S. Office of Education, page 5 14

Constitution of the State of New York:
Preamble 8
Article XI, Sec. 4 8

New York Statute

Education Law (L. 1940):

Chapter 305 2
Section 625B-2 2
Section 90 4
94 4
310 5

MISCELLANEOUS

PAGE

Board of Education of City of White Plains; Regulation of 1926 8

Board of Education of the City of New York; Rules issued November 13, 1940 5

California Education Code, Sec. 8286 15

Catholic Bishops of the United States; Statement dated November 15, 1940 25

Chamber of Commerce of the State of New York; Statement dated August 12, 1939 22

Educational Bulletin No. 601 ("The Weekly Church School") (1945) 24

Governor Lehman's Memorandum 13

Jewish Education Committee of the City of New York; Statement dated November 13, 1940 23

State Commissioner of Education; Statement dated July 4, 1940 4

The International Council of Religious Education; Bulletin No. 601 24

Supreme Court of the United States

October Term, 1947

No 90

PEOPLE OF THE STATE OF ILLINOIS *ex rel.*
VASHTI MCCOLLUM,

Appellant,

vs.

BOARD OF EDUCATION OF SCHOOL DISTRICT No. 71, CHAMPAIGN COUNTY, ILLINOIS, and ELMER C. BASH and ALICE J. BASH, and WANDA I. BASH, a Minor, by ELMER C. BASH, Her Father and Next Friend,

Appellees.

PETITION OF THE PROTESTANT COUNCIL OF THE CITY OF NEW YORK FOR LEAVE TO FILE THE ANNEXED BRIEF *AMICUS CURIAE*, WITH SPECIAL REFERENCE TO THE NEW YORK STATUTE AND JUDICIAL DECISIONS SANCTIONING RELEASED TIME.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Protestant Council of the City of New York hereby petitions for leave to file herein the annexed brief *amicus curiae*, in order to place before this Court the *statutory* system in New York State, known as Released Time, and the judicial decisions which have upheld its legality and constitutionality.

The Protestant Council is the federation of the Protestant Churches and educational agencies in the City of New York.

The Protestant Council, in association with Catholic and Jewish groups, has been a sponsor of the Released Time program in New York City since the passage of the New York Statute in 1940 (L. 1940, ch. 305): It participates in assuring the conduct of that program in New York City in accordance with the rules and regulations for Released Time established under authority of that Statute by the New York State Commissioner of Education and by the Board of Education of New York City.

There are now on Released Time over 100,000 public school children in New York City, and a greater number in the rest of the State. The totals are steadily increasing.

In 1940 the Legislature amended Section 625B-2 of the Education Law, which Section carries the subtitle of "Amount and character of required attendance", by adding thereto the following additional sentence (L. 1940, ch. 305):

> "Absence for religious observance and education shall be permitted under rules that the commissioner (the State Commissioner of Education) shall establish."

This 1940 Statute was, in substance, a legislative sanction of a practice which for many years previously had been established and conducted by numerous local Boards of Education throughout the State, although not in New York City. In *People ex rel. Lewis* v. *Graves*, 245 N. Y. 195, decided May 10, 1927, the State Court of Appeals had upheld as lawful and constitutional the pre-statutory practice of Released Time as established by the Board of Education of the City of White Plains, N. Y.

According to this White Plains plan, children were excused, at the request of parents so desiring, once a week for the last half-hour of the school session to attend religious instruction at church centers selected by the parents and *located off the school grounds.*

After the passage of the 1940 Statute, the New York State Commissioner of Education established certain rules for this plan of Released Time and the Board of Education of the City of New York established certain supplementary rules. Both sets of rules are quoted at length in the brief which the Council desires to submit.

As already stated, the constitutionality of this New York plan for Released Time, both before and since its sanction by the 1940 Statute, was settled by the unanimous decision of the New York State Court of Appeals in *People ex rel. Lewis* v. *Graves*, 245 N. Y. 195, decided May 10, 1927, and affirming like decisions by the lower courts.

As set forth in the brief which the Council submits, like statutes have been enacted in many other states of the Union; and the Council believes that knowledge of this statutory plan for Released Time and references to the judicial decisions upholding it as legal and constitutional will be of great aid to the Court in considering and deciding the issues in this case.

Counsel for the Council has received a telegram from Mr. Walter F. Dodd, attorney for the appellant herein, reading as follows:

> "I consent to your filing an amicus curiae brief in the McCollum case."

Counsel for the appellees state that they have adopted the set rule of not consenting to the filing of briefs *amicus curiae*, that they feel that they cannot make an exception in this instance but that (to quote their telegram) "any other cooperation we will gladly extend."

The required number of copies of the Council's brief *amicus curiae* are herewith filed with the Clerk of this Court. The Council respectfully requests that the Court grant permission for its acceptance by the Court.

November 21, 1947.

Respectfully submitted,

THE PROTESTANT COUNCIL OF THE CITY OF NEW YORK

By CHARLES H. TUTTLE
Chairman of the Council's Board of Christian Education

CHARLES H. TUTTLE, *Counsel*
15 Broad Street
New York 5, N. Y.

Supreme Court of the United States

October Term, 1947

No. 90

PEOPLE OF THE STATE OF ILLINOIS *ex rel.*
VASHTI McCOLLUM,

Appellant,

vs.

BOARD OF EDUCATION OF SCHOOL DISTRICT No. 71, CHAMPAIGN COUNTY, ILLINOIS, and ELMER C. BASH and ALICE J. BASH, and WANDA I. BASH, a Minor, by ELMER C, BASH, Her Father and Next Friend,

Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS

BRIEF, *AMICUS CURIAE*, BY THE PROTESTANT COUNCIL OF THE CITY OF NEW YORK,

with special reference to the New York Statute and Judicial Decisions sanctioning "Released Time".

Preliminary Statement

This brief is submitted in order to place before this Court the *statutory* system in New York State, known as Released Time, and the judicial decisions which have upheld its legality and constitutionality.

The Protestant Council is the federation of the Protestant churches and educational agencies in the City of New York.

The Protestant Council, in association with Catholic and Jewish groups, has been a sponsor of the Released Time program in New York City since the passage of the New York Statute in 1940 (L. 1940, ch. 305). It participates in assuring the conduct of that program in New York City in accordance with the rules and regulations for Released Time established under authority of that Statute by the New York State Commissioner of Education and by the Board of Education of New York City.

There are now on Released Time over 100,000 public school children in New York City, and a greater number in the rest of the State. The totals are steadily increasing.

The New York Statute for Released Time

In 1940 the Legislature amended Section 625B-2 of the Education Law, which Section carries the subtitle of "Amount and character of required attendance", by adding thereto the following additional sentence (L. 1940, ch. 305):

> "Absence for religious observance and education shall be permitted under rules that the commissioner (the State Commissioner of Education) shall establish."

This 1940 Statute was, in substance, a legislative sanction of a practice which for many years previously had been established and conducted by numerous local Boards of Education throughout the State, although not in New York City. In *People ex rel. Lewis* v. *Graves*, 245 N. Y.

195, decided May 10, 1927, upholding as lawful and constitutional the pre-statutory practice of Released Time as established by the Board of Education of the City of White Plains, N. Y., the New York Court of Appeals described that practice as follows (pp. 196-7):

> "Persons interested in religious instruction of the children in the public schools of the State have recently inaugurated a plan which has been put in operation in the city of White Plains and, with varying details, elsewhere. As it operates in White Plains, the plan is to excuse from school attendance children between the ages of seven and fourteen years, on the written request of parents, one day in each week, for the last half-hour of the school session, which is a study period, so that they may attend one of the several denominational church schools which give religious instruction during such period. The child so excused loses no school recitations and receives no credit for the work taken in the church school. The city of White Plains does not use public money to aid the church schools, although the co-operation between the public schools and the church schools requires a slight use of the time of the school teachers in registering and checking up excuses. The plan is governed by suitable regulations of the school authorities but does not rest on any legislative enactment."

The Rules for Released Time, as Established by the State Commissioner of Education and by the New York City Board of Education, Pursuant to the New York Statute

A

Under Sections 90 and 94 of the New York Education Law, the Commissioner of Education "is the chief executive officer of the state system of education and of the board of regents."

Section 94 further provides:

> "2. He (the Commissioner of Education) shall have general supervision over all schools and institutions which are subject to the provisions of this act, or of any statute relating to education, and shall cause the same to be examined and inspected, and shall advise and guide the school officers of all districts and cities of the state in relation to their duties and the general management of the schools under their control."

Under authority of the New York Released Time Statute the State Commissioner of Education promulgated on July 4, 1940 the following regulations, which are still in force:

> "1. Absence of a pupil from school during hours for religious observance and education to be had outside the school building and grounds will be excused upon request in writing signed by the parent or guardian of the pupil.
>
> "2. The courses in religious observance and education must be maintained and operated by or under the control of a duly constituted religious body or of duly constituted religious bodies.

"3. Pupils must be registered for the courses and a copy of the registration filed with the local public school authorities.

"4. Reports of attendance of pupils upon such courses shall be filed with the principal or teacher at the end of each week.

"5. Such absence shall be for not more than one hour each week at the close of a session at a time to be fixed by the local school authorities.

"6. In the event that more than one school for religious observance and education is maintained in any district, the hour for absence for each particular public school in such district shall be the same for all such religious schools."

B

Under Section 310 of the New York Education Law, local Boards of Education are given general powers to adopt rules concerning the order, discipline and conduct of the local public schools, to prescribe the courses of study, and to effectuate the laws as to education.

On November 13, 1940, the Board of Education of the City of New York issued the following rules for the purpose of effectuating in New York City the statutory authorization of Released Time and the foregoing rules established by the State Commissioner of Education:

"1. A program for religious instruction may be initiated by any religious organization, in cooperation with the parents of pupils concerned. There will be no announcement of any kind in the public schools relative to the program.

"2. When a religious organization is prepared to initiate a program for religious instruction, the said organization will notify parents to enroll their chil-

dren with the religious organization, and will issue to each enrolled pupil a card countersigned by the parent and addressed to the principal of the public school, requesting the release of the pupil from school for the purpose of religious instruction at a specific location. The said cards will be filed in the office of the public school as a record of pupils entitled to be excused, and will not be available or used for any other purpose.

"3. Religious organizations, in cooperation with parents, will assume full responsibility for attendance at the religious center and will file with the school principal, weekly, a card attendance record and in cases of absence from religious instruction, a statement of the reason therefor.

"4. Upon the presentation of a proper request as above prescribed, pupils of any grade will be dismissed from school for the last hour of the day's session on Wednesday of each week, except that in classes on a departmental schedule release will be limited to the last period of the program.

"5. Pupils released for religious instruction will be dismissed from school in the usual way and the school authorities have no responsibility beyond that assumed in regular dismissals.

"6. There shall be no comment by any principal or teacher on the attendance or non-attendance of any pupil upon religious instruction."

The chief characteristics of New York Statutory Released Time

The characteristics of statutory Released Time in New York are:

1. The religious instruction is given *outside* the school buildings and grounds;
2. The pupil is excused for the purpose *only* upon the written request of the parent or guardian;
3. The absence is limited to one hour a week, such hour to be the last hour of the school session;
4. The religious organizations, in cooperation with the parents, must assume full responsibility for attendance at the religious center and for the program of religious instruction thereat;
5. The released pupils must be dismissed from school in the way usual in the case of permitted absences;
6. The school authorities have no responsibility beyond that assumed in regular dismissals;
7. The parent's written request is filed with the school and will not be available or used for any other purpose;
8. The religious organization or center will file with the school a card attendance record for each pupil excused from the school pursuant to the parent's request;
9. There must be *no comment* by any principal or teacher on the attendance or non-attendance of any pupil upon religious instruction.
10. The plan has the sanction of a *statute* enacted because deemed "necessary to promote the general well-being of the people". (*Everson* v. *Board of Education*, 330 U. S. 1, 6-7.)

The Decisions of the New York Courts in *People ex rel. Lewis* v. *Graves*, Upholding the Constitutionality of the New York Plan of Released Time

The Preamble of the New York State Constitution, adopted by vote of the people on November 8, 1938, reads:

> "We, The People of the State of New York, *grateful to Almighty God for our Freedom*, in order to secure its blessings, Do Establish This Constitution." (Emphasis supplied.)

The New York State Constitution also provides (Article XI, Section 4):

> "§4. Neither the state nor any subdivision thereof shall use its property or credit or any public money, or authorize or permit either to be used, directly or indirectly, in aid or maintenance, other than for examination or inspection, of any school or institution of learning wholly or in part under the control or direction of any religious denomination, or in which any denominational tenet or doctrine is taught, but the legislature may provide for the transportation of children to and from any school or institution of learning. (Formerly §4 of Art. 9. Renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)"

In 1926 the Board of Education of the City of White Plains, N. Y., adopted a regulation for excusing pupils in its public schools, upon the written request of their parents, for thirty minutes in the afternoon of one day a week, for the purpose of attendance at centers of religious instruction which were off the school grounds and were provided by the churches of the various denominations in the city. The relator Lewis, President of the Freethinkers'

Society of New York, applied for a peremptory writ of mandamus commanding the State Commissioner of Education to forbid this practice. The relator's petition expressly prayed for an adjudication that the White Plains plan of Released Time was (Record on Appeal, p. 13, fol. 39):

> "in violation of the laws and constitutions of this state and of the United States respecting education and the separation of church and state."

The Special Term of the Supreme Court of the State of New York (Staley, J.) upheld this White Plains program, denied the writ, and said (127 Misc. 135, 140):

> "That the right of the parent to direct the training and nurture of the child is a fundamental right;
>
> "That the obligations of citizenship require the promotion of a spirit of patriotic and civic service and the fostering in children of moral as well as intellectual qualities;
>
> "That the religious conscience, conviction and accountability are the least dispensable foundations for good citizenship and real patriotism;
>
> "That moral growth and intellectual growth go hand in hand to make the essential elements of character and good citizenship;
>
> "That the right of the State to enforce school attendance does not mean that the mental and moral development of all children must be limited to a common mould, and that all children must be standardized;
>
> "That the regulation does not create a union between church and State, or teach any sectarianism in the schools or invade the religious freedom or conscience of any individual."

The Appellate Division of the Supreme Court unanimously affirmed this decision, and said (219 App. Div. 233, 238):

> "• • • The Commissioner and local authorities have adopted a benevolent policy in which the interests of both parents and children are considered. They recognize that all education is not acquired in the schools; that except for subjects legally prescribed, the parents may select the studies their children shall pursue; that it is the right of parents to direct the destiny of their children and guide them along paths of filial duty as well as in those of obligation to the State (*Pierce* v. *Society of Sisters*, 268 U. S. 510, 535); and that a belief in religion is not foreign to our system of government. (*Holy Trinity Church* v. *United States*, 143 U. S. 457, 465; *People* v. *Ruggles*, 8 Johns. 290, 294.)"

The Appellate Division further said (p. 239):

> "The State by its educational policy seeks to build from its youth useful citizens of intelligence and character, not merely pedants and philosophers. In following this policy it should not only consider the wishes but invite the aid of parents. When the wish of parents for week day religious instruction for their children involves no serious interruption to school attendance, the State can have no purpose to defeat it. If local school authorities render their assistance by methods so innocuous as those detailed here, it does not amount to illegality. Reasonableness in the method adopted is the test of such legality. Neither the local school officers nor the Commissioner of Education have here violated that rule."

The State Court of Appeals thereupon also unanimously affirmed, and said (245 N. Y. 195, 198-9):

> "• • • Practical administration of the public schools calls for some elasticity in this regard and

vests some discretion in the school authorities. Neither the Constitution nor the law discriminates against religion. Denominational religion is merely put in its proper place outside of public aid or support. As a matter of educational policy, the Commissioner doubtless may make proper regulations to restrict the local authorities when the administration of the plan of week-day instruction in religion or any plan of outside instruction in lay subjects in his judgment interferes unduly with the regular work of the school. * * *

"Eternal vigilance is the price of constitutional rights. But it is impossible to say, as matter of law, that the slightest infringement of constitutional right or abuse of statutory requirement has been shown in this case."

The relator's motion for reargument was denied (245 N. Y. 620).

This decision of the New York Court of Appeals was subsequently cited by that Court with approval in *Lewis* v. *Board of Education of the City of New York*, 258 N. Y. 117, 123, and in *Judd* v. *Board of Education*, 278 N. Y. 200, 211.

In 1929 the Board of Education of the City of Chicago adopted a program of Released Time similar to the White Plains program upheld by the New York Court of Appeals in *People ex rel. Lewis, supra*, except that the authorized period of absence was one hour instead of half an hour. An attack was made on the action of the Chicago Board of Education as violative both of the Illinois Constitution and of the United States Constitution; but in *People ex rel. Latimer* v. *Board of Education*, 394 Ill. 228, the Supreme Court of Illinois upheld the Chicago program with principal reliance on the New York decisions in *People ex rel. Lewis, supra.*

Subsequently and as recently as May 8, 1947, the District Court of Appeals of California, in the case of

Gordon v. *Board of Education of the City of Los Angeles*, 78 Cal. App. (2d) 498; 178 Pac. (2d) 488 (review denied by the California Supreme Court), upheld as constitutional a California statute similar to the New York statute in its sanction of Released Time and upheld a practice thereunder closely resembling the New York plan established by the New York educational authorities as above described. The California court relied on the New York decisions in *People ex rel. Lewis* v. *Graves, supra*, and the Illinois decision in *People ex rel. Latimer* v. *Board of Education, supra;* and said (p. 494):

> "No one who keeps pace with the trends of modern society can deny that instruction of the youth of the state in faith and morality is of utmost necessity and importance. All too regretfully it must be said that in present-day American life the family as a unit has not done its part in this vital field of education of our boys and girls. Else juvenile courts would not be groaning under an avalanche of cases of derelictions of children. What more logical advance could be made in the science of sociology than the unification of religious leaders in a coordinated effort to teach children faith and morality—and for that purpose to excuse them from schools for one hour a week to go to the church or tabernacle or synagogue of their parents' choice?"

The Appellant's brief herein cites the New York Special Term decision in *Stein* v. *Brown*, 125 Misc. 692 (June 23, 1925); but that decision was rendered before the foregoing decisions of the New York courts in *People ex rel. Lewis* (where it was the principal reliance of the unsuccessful appellant) and before the enactment of the New York Statute in 1940. Moreover, in that case the cards recording the absences of the pupils for religious instruction were printed in the school, during school hours, on printing presses belonging to the Board of Education.

Concerning this Special Term decision in the *Stein* case, *American Law Reports, Annotated*, says (167 A. L. R., p. 1474):

> "The effect of this decision is greatly weakened by the decision in the preceding case (*People ex rel. Lewis* v. *Graves*) which was later in point of time and determined by a higher court."

Subsequent to the decisions in *People ex rel. Lewis*, the Legislature of the State of New York enacted the aforesaid Chapter 305 of the Laws of 1940 which put legislative recognition and support behind those decisions and their principles.

Governor Lehman's Memorandum on Signing the New York Statute

In approving and signing the bill which incorporated the amendment as to Released Time into the New York Education Law, Governor Lehman said:

> "Under this bill the State Commissioner of Education shall establish rules under which children may on certain occasions be permitted to leave school for the purpose of attending their religious observances and receiving religious education.
>
> "For some time it has been the practice in many localities in the State to excuse children from school a certain period each week for religious instruction. The board of regents has recognized the right of local school boards to do this. The Court of Appeals unanimously held that the practice was within the letter and the spirit of our Constitution and laws. In so holding the Court of Appeals pointed out: 'Neither the Constitution or the law discriminates against reli-

gion. Denominational religion is merely put in its proper place outside of public aid or support.'

"However, at the present time there is no uniformity of practice throughout the State. Nor is any officer or agency of the State authorized or charged with the responsibility of adopting rules under which absences for religious observance or instruction may be permitted. This bill will assure some uniformity and permanency by placing the authority and responsibility upon the State Commissioner of Education to adopt such rules.

"A few people have given voice to fears that the bill violates principles of our Government. These fears in my opinion are groundless. The bill does not introduce anything new into our public school system nor does it violate the principles of our public educational system."

Statutes in Other States Similar to the New York Statutory Program of Released Time

The Appellant's brief in the present case now before this Court, says (p. 17):

> "Statutory authorization of such a plan is found not only in New York but also in Iowa, Kentucky, Maine, Minnesota, Oregon, South Dakota and West Virginia; Minnesota permitting an absence of three hours a week (Minnesota Statutes, sec. 132.05, subdivision 3) • • •."

Bulletin 1941, No. 3, published by the Federal Security Agency, U. S. Office of Education, says (p. 5):

> "Special legislative authorization for the release of public-school pupils during school hours for religious education was reported for Iowa, Kentucky, Maine, Minnesota, New York, Oregon, South Dakota, West Virginia, and for Hawaii and the Philippine Islands.

> Four of the 8 state laws were enacted during the last 2 years, 1939-40 (Kentucky, Maine, New York, and West Virginia). Certain similarities appear in the legal specifications. For example, all but the Iowa law require a signed request from parents or guardians before a pupil may be released for the weekday classes and 7 of the laws specify the amount of time each week during which pupils may be away from school."

California has since adopted in 1943 a like statute. (*California Education Code, Section 8286; Gordon* v. *Board of Education*, 78 Cal. App. 2d 498.)

As far as we know, no court has ever held unconstitutional any of these statutes.

The American Tradition

Furthermore, it cannot be emphasized too strongly or too frequently that the American tradition from its earliest days is and continues to be that "this is a religious people".

Such was the explicit and elaborated declaration of this Court in *Holy Trinity Church* v. *United States*, 143 U. S. 457, where this Court read into a federal statute forbidding the importation of aliens under contract to perform labor in the United States an implied exception of a contract by a religious society to employ as its rector or minister an alien clergyman.

After analyzing the history and nature of the federal statutes relating to the employment of aliens, this Court said (p. 465):

> "But beyond all these matters no purpose of action against religion can be imputed to any legislation, state or national, because this is a religious people. This is historically true. From the discovery of this continent to the present hour, there is a single voice making this affirmation."

This Court thereupon quoted from the numerous historic documents which hold a revered place in the history of America and of the United States, and said (pp. 470-1):

> "There is no dissonance in these declarations. There is a universal language pervading them all, having one meaning; they affirm and reaffirm that this is a religious nation. These are not individual sayings, declarations of private persons; they are organic utterances; they speak the voice of the entire people. * * *
>
> "If we pass beyond these matters to a view of American life as expressed by its laws, its business, its customs and its society, we find everywhere a clear recognition of the same truth."

In view of this American history and tradition, the Supreme Court of Illinois was profoundly right when it said in the present case:

> "To deny the existence of religious motivation is to deny the inspiration and authority of the constitution itself."

The New York Statutory Program of Released Time is a Recognition of the Constitutional Right of Parents and Guardians to Religious Conviction and Freedom in the Education of Their Children.

(1) Under the Constitution of the United States and in the very nature of our free society the most fundamental liberty of all is, to use the words of this Court in the *Oregon School Law* case (*Pierce* v. *Society of Sisters*, 268 U. S. 510, 534), "the liberty of parents and guardians to direct the upbringing and education of children under their control."

The tragic events which have befallen the world since that opinion was delivered by a unanimous court in 1925

illuminate the profound truth of the following further sentences therein (p. 535):

> "The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations."

In *Prince v. Massachusetts*, 321 U. S. 158 (1944), this Court said (p. 166):

> "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder."

In *In re Stuart*, 114 Fed. (2d) 825 (1940) the United States Court of Appeals for the District of Columbia said (p. 832):

> "Under our constitutional system, the citizen has more than a revocable privilege to possess and to rear his children. Under our theory of government there is recognized as inherent in parents a right to maintain the custody and to direct the upbringing and education of their own offspring. True, this right is not absolute. If parents treat their children with cruelty or neglect, or are unfit in character or mode of life suitably to control their association and upbringing, the state for the welfare of the child and society may interfere. But rights guaranteed by the constitution are not to be qualified either by legislation or judicial action having no reasonable relation to some purpose within the competency of the state."

In *Palko* v. *Connecticut*, 302 U. S. 319 (1937), this Court said, concerning "*freedom of thought and speech*", (p 327):

> "Of that freedom one may say that it is the matrix, the indispensable condition, of nearly every other form of freedom. With rare aberrations a pervasive recognition of that truth can be traced in our history, political and legal. So it has come about that the domain of liberty, withdrawn by the Fourteenth Amendment from encroachment by the states, has been enlarged by latter-day judgments to include liberty of the mind as well as liberty of action."

(2) The New York Statute authorizing Released Time is designed to protect and give reasonable freedom to the exercise of this liberty on the part of parents.

Its purpose is to assist those parents, who wish to do so, to discharge this obligation of so interpreting to their children the standardized system of public education that it will not restrain and negate their high duty to prepare their children for the additional obligations of life and for its spiritual verities in accordance with their conscience and religious convictions.

This Statute merely recognizes this most fundamental of all democratic principles of liberty. It enables parents, who are so moved, to remind their children that they are not the mere creatures of the state and that a public standardized and compulsory system of secular education is not intended to imply that spiritual faith and education in religious conviction may not be regarded as vital equipment for life and citizenship.

In all this there is no violation whatever of the principle of a separation of church and state. Such separation does not preclude recognition by the state of this fundamental right of liberty on the part of parents and the reasonable freedom which they should have in preventing

what they may regard as implications adverse to religious faith from any overshadowing standardized system of compulsory secular education.

Who can validly deny this right to parents who believe that education divorced from faith is a menace to the life of the individual and to democracy itself? Who shall say that they have not the right to enjoy this principle of religious freedom?

(3) The public schools of today, with attendance compulsory for most of our children, have expanded to the dimensions of life itself. They provide for the education of children in practically every human interest except religious faith. They extend their secular instruction to matters of origin, destiny and human relationships, with all of which religion is vitally concerned.

The omission and ignoring of religion by such schools can convey (however unintentional) a powerful disparaging implication and inclination of mind. Many anxious parents feel that secularism and her twin-sister materialism monopolize this dynamic approach to the mind of children.

Multitudes of parents have the right to a conviction, and indeed have the conviction deep in their hearts, that there is an implied negation and exclusion as regards spiritual ideals and spiritual faith, and that such implied negation and exclusion are at the root of much of the disorders and tragedies of our times. The New York Statute does no more than to give to such parents a means of expression and activation for such conviction and for the discharge of what they regard as their high duty not only toward their children but toward the system of public education itself and toward democracy itself.

(4) The world knows from centuries of bitter and bloody experience that every rising dictatorship or totalitarianism seeks, as its first and most urgent effort, to remove from parents the control of the mind of the child and the youth, and to cast the young mind into the uniform mold deemed to be best suited to its own tyrannical purpose and monolithic ideology.

Parents have a right to fear, and many do fear, that implications in a system of purely secular public and compulsory education may convey to their children's minds that the objective of being is to make a living rather than a life; and they have a right to fear that such a public system can carry to the young mind the conviction, whether so intended or not, that God is not a serious and essential factor in human existence and civilized society.

Under the secular techniques of our present public and compulsory educational system, the First of the Two Great Commandments can have no place in the curriculum of study. What, then, are the rights of parents who feel that this exclusion will convey to their children that the First Commandment must be a delusion or of no account, and that in a generation or two the Second Commandment, which is like unto the First, must consequently follow it into neglect and oblivion?

Overseas, we have seen to our terrible cost that a great people who were led to embrace a system of ideological education which omitted the First Commandment, soon accepted the thesis that the Second Commandment had no application where it interfered with the purposes of the state and that any kindness which interfered with the official ideology would be severely punished as a sin.

Eternal vigilance is, as wisdom has so often said, the price of liberty. Free people, free parents, free churches, have the right to be on guard against the consequences of secularism in major control of the interpretation of life,

and to expect (and indeed demand) that room be made for recognition of the spiritual nature, obligation, dignity and destiny of every individual. They have the right to entertain and express the fear that mere secularism, when carried to dominance over the mental capacities of the child, will make easier the stealthy approach in America of the ravenous doctrine which is even now again stalking its prey throughout the world, that man is made for the state, not the state for man. They have the right to believe that a total exclusion from public education of recognition of religion may amount in the minds of their children to indoctrination in irreligion.

(5) Those among us who are parents have a right—a basic constitutional right—to demand that the State shall not expose our children to what we conceive to be these evil implications and dangers, without affording some antidote—some counterbalance—in the public secular system of education itself. Those who so believe have the right—the constitutional right—to see and to seek in a reasonable plan for Released Time just such an antidote, just such a counterbalance. And, equally, the State has the constitutional right, indeed the duty, to afford to parents who have such convictions and desires, just such an antidote—just such a counterbalance.

And where do those who say that the public compulsory educational system shall have no room at all for such conviction and freedom, get the "right" to impose their will on all religious people and parents who hold different views as to the meaning and purpose of education and of life, and who have the primary responsibility for the character, happiness and responsibility of their own children? Do those who would so impose their will get their "right" to do so from some assumed privilege of primacy for their own beliefs, or from some alleged majority will, or from

some prerogative of the state? An affirmative answer to any of these three alternatives denies the doctrine of the *Oregon School Law* case and strikes at the basic freedom on which all individual liberty must rest.

(6) In New York and many other states, Released Time has come to be regarded as, in some degree at least, the antidote—the counterbalance—which may be utilized by parents so minded, and which will enable them and the State itself to show to their children that Education and the State are not opposed to religion and religious belief and do not intend to convey that the public system invites the ignoring of spiritual values.

This Statute involves nothing which is basically new. This idea and plan of Released Time had been accepted and practiced by many boards of education in New York State before the New York Court of Appeals sanctioned it in the *White Plains* case some twenty-one years ago. It has received the support of the great majority of the citizens of New York, irrespective of creed; and that support has been steadily increasing as the wise administration of the plan has shown that none of the fears expressed concerning it has been found justified.

On August 12, 1939, *the Chamber of Commerce of the State of New York* adopted the following statement:

> "By and large States are not preserved and strengthened by culture or education or knowledge. They stand on—character, morals and physical well being."
>
> "Accordingly, we place First on our list of things necessary to produce 'The Schools New York State Wants' a Deep, True, Religious Understanding and Viewpoint."
>
> "If this Nation does not maintain its religious foundation—its whole structure will fail."

"We do not want church differences mixed up in our schools; but we do want our scholars to appreciate and understand the importance of their following and making the most of the faith with which they are identified. We want them to know and to live by the basic rules of life which each will find in his own religion."

"In spite of the fact that some hesitate to include religion in our educational program, we place it first."

If such a commercial and non-sectarian body as the New York State Chamber of Commerce can take this view as to our standardized secular public school system, have individual parents not the right to take the same view and to see in this Statute for Released Time a charter of freedom for their views as to the relation between education and spiritual faith?

On November 13, 1940, when the adoption of rules for Released Time was under public discussion before the Board of Education of the City of New York, the *Jewish Education Committee of New York*, speaking through Hon. Mark Eisner, said to the Board:

"The Jewish Education Committee of New York desires to record its readiness to cooperate with the Board of Education of the City of New York in its plans for furnishing time for religious education for the children of the City of New York.

"We believe that religious education is an essential part of the complete education of all American children.

"We believe that religious education should be given by the respective churches and religious organizations of the city, and that it should receive the sanction and moral encouragement of the entire community.

"We believe that the public schools can encourage religious education without jeopardizing in any way

the precious principle of separation between State and Church; and that this can be achieved by reducing by one hour per week the time required for attendance at public school for all pupils, enabling them to take advantage of this hour for religious instruction in their respective churches."

In Educational Bulletin No. 601, entitled "The Weekly Church School" and published in 1945 by *The International Council of Religious Education*, which is the interdenominational organization of the Protestant Churches for Religious Education, there are these statements descriptive of the basic principles of and justifications for Released Time (p. 1):

"1. Although the public schools undertake to equip the younger generation to cope with every kind of life problem through an education 'as broad as life', they usually omit all reference to religion. Certainly this omission tends to put religion among the children's marginal interests. The weekday church school is at present the only organized effort to integrate religion with the child's total educational experience. • • •

"5. Since the weekday program on released time is planned for all children—Roman Catholic, Jewish, Protestant, and others—it furnishes an unparalleled opportunity for each faith to understand the others through engaging in cooperative enterprises. In communities sponsoring weekday schools, religion can stand united against irreligion instead of standing one group over against another. So the weekday school program can become a signifi ant demonstration of a free church and a free public school cooperating in the total education of children and youth, without violating the principle of the separation of church and state."

On November 15, 1949, *the Catholic Bishops of the United States,* in a public statement on secularism, declared:

> "In no field of social activity has secularism done more harm than in education. In our own country secularists have been quick to exploit for their own purposes the public policy adopted a century ago of banning the formal teaching of religion from the curriculum of our common schools. With a growing number of thoughtful Americans, we see in this policy a hasty and short-sighted solution of the very difficult educational program that confronts public authority in a nation of divided religious allegiance.
>
> "But it should ever be kept in mind that the original proponents of the policy did not intend to minimize the importance of religion in the training of youth. Erroneously, however, secularists take this policy, adopted as a practical expedient in difficult circumstances, and make it the starting point in their philosophy of education. They positively exclude God from the school. Among them are some who smile indulgently at the mention of the name of God and express wonder that inherited illusions last so long. Others are content with keeping God closeted in the inner chambers of private life.
>
> "In the rearing of children and the forming of youth, omission is as effective as positive statement. A philosophy of education which omits God, necessarily draws a plan of life in which God either has no place or is a strictly private concern of men. There is a great difference between a practical arrangement which leaves the formal teaching of religion to the family and to the church, and the educational theory of the secularist who advisedly and avowedly excludes religion from his program of education."

The foregoing official statements from Jewish, Protestant and Roman Catholic sources, and from the Chamber

of Commerce, are a sobering diagnosis of the maladies which have taken root in American society and which threaten its solidarity through loss of emphasis and awareness of spiritual values and moral obligations.

(7) Nor in this New York Statute is there any element of segregation. All parents, all children and all religious faiths are treated alike and all pupils whose parents request it will leave the same classroom at the same moment. Our schools already excuse pupils for the observance of days regarded as holy by their respective faiths; and such observance has not been found to create segregation notwithstanding that the observance of a particular holy day affects only the children of a particular faith.

Respectfully submitted,

THE PROTESTANT COUNCIL OF THE CITY OF NEW YORK,

By Charles H. Tuttle,
Chairman of the Council's Board of Christian Education.

CHARLES H. TUTTLE, *Counsel*,
15 Broad Street,
New York City 5, N. Y.